IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 890 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANILAL M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR RD DAVE for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 25/08/2000

ORAL JUDGEMENT

The appellants being the accused No.1 and 3 faced the trial for the offence punishable under Section 3 read with Section 7 of Essential Commodities Act, 1955 (for short "the Act") and Section 27(d) read with Section

28(a) of the Drugs and Cosmetics Act in Special Criminal Case No.48/86 and 23/86 before the Learned Special Judge, City Civil & Sessions Court, Ahmedabad. The case of prosecution was that the accused No.3, Krishna Medical Stores was dealing in the sale of medicines and cosmetics under authorised licence/s, but it was found that the said concern was selling H Allopathy drug, which could not be sold without prescription of a Medical Practitioner and without issuing bills in respect thereof. The complaint in that respect was received in the office of the Directorate of Food and Drugs Control, Gujarat State to the effect that excess price for a drug for treatment of cancer was charged by the Chemist, Krishna Medical Stores, whereupon on 5-6-1984 a trap was arranged by sending a bogus customer with a prescription of Dr. Arvind Patel of Baroda. He purchased the said medicine by making payment of Rs.700/- in the currency notes of Rs.100/- each. The said medicine was Adriamycin injections. The shop keeper returned Rs.40/- deducting Rs.660 out of the said amount of Rs.700/-. Upon the prearranged signal having been given by the said person, the raiding authority rushed to the shop of accused no.3 and recovered four injections and Rs.40/from the aforesaid person (bogus customer) and currency notes of Rs.700 from the accused no.1. Necessary panchnama in respect of both the aforesaid parties came to be drawn at the respective places. During the enquiry, it was found that the two original bills issued by New Royal Chemist, Bombay suggesting the purchase of Adriamycin injections (Adriblastina Farmitalia) is said to be recovered from the shop of accused no.3. The original bills were returned to the shop keeper and copies of the bills were recorded at Exh. 59 and 51. Necessary entries which were required to be made in the register were not made by the accused. The registered pharmacist Shankerlal Oza, who was employee of the accused no.3 was not present when the transaction had taken place. The prescribed rate of injection was Rs.127 plus local taxes, whereas Rs.165/per injection were recovered. From one of the four cartons of the injections, retail price was removed. Necessary copies of the bills and the receipts were taken on record after investigation was over. The matter went before the Learned Sessions Judge, where the statements of accused persons came to be recorded. The accused denied the accusation levelled against them. At the conclusion of trial Learned Special Judge by impugned judgement and order dated 23-11-87 found accused no.3, Krishna Medical Stores guilty of offence punishable under Section 7 of the Act and directed a fine of Rs.200/- against the said accused by way of punishment. Accused no.1 was also found guilty of offences punishable under Section 7 read

with Section 10 of the Essential Commodities Act, under Section 27(d) and Section 28(a) of the Drugs and Cosmetics Act and was sentenced to undergo simple imprisonment for a period of three months for each of the said offences and pay fine of Rs.200/- and Rs.100/respectively. He was also directed to undergo substantive sentence for the aforesaid three provisions concurrently. The said conviction and sentences have been challenged in this appeal by the accused no.1 and no.3. Accused no.2 was acquitted of the charges levelled against him and there is no acquittal appeal in respect of the said order. It may be noted that the Learned Special Judge considered that there was no evidence to connect accused no.2 with the business of accused no.3 Krishna Medical Stores and therefore, the P.P. did not press for conviction against accused no.2.

When this appeal came up for final hearing before this Court, Mr. R.D. Dave, Learned Advocate, had taken this Court through the judgement of the Trial Court as well as evidence placed before the said Court. Realising that it will be difficult to assail the conviction of the accused nos.1 and 3, he submitted affidavit of the accused no.1 himself and for accused no.3, for showing indulgence in the matter of substantive sentence. He prayed for benefit of probation under the provisions of Probation of Offenders' Act, but looking to the nature of the offences punishable under Section 7 read with Section 10 of the Essential Commodities Act and Sections 27(d) and 28(a) of the Drugs and Cosmetics Act, providing for minimum sentence respectively of three months and 1 year, he prayed for reduction in these sentences for the following reasons:

a) Nearly 16 years have passed, since the date of offence and nearly 13 years have passed since the date of pronouncement of the order by the Trial Court. No purpose will be served by sending the accused no.1 in jail and he may be directed either to be released on probation or to undergo sentence till rising of the Court in so far substantive sentence is concerned.

b) At present accused no.1 is 48 years of age and has been suffering from high blood pressure, whereas his wife has been suffering from Gynec problems as per para 2.2 of the affidavit.

c) Accused no.1 has aged parents (father aged at 75 years and mother aged at 70 years), two daughter aged about 18 and 16 years and two minor sons

aged about 12 and 10 years.

d) The eldest daughter of accused no.1 has reached marriageable age and if the accused no.1 is sent to jail, chance of searching a match for her would stand deteriorated.

e) The accused no.1 had only three months' experience in the business, which was started new at the time when the offence was committed. He did not have any knowledge of statutory requirements for said business. His pharmacist was coincidentally not present. Thus he had lack of knowledge as well as experience at the time when the complaint was filed against him. Throughout the whole period of his carrying on business in drugs and cosmetics there has been no lapse or fault or offence committed by him till date.

f) Learned APP submitted that there was nothing adverse to submit against the circumstances set out by the accused no.1 in the aforesaid affidavit.

It is true that the legislation has provided minimum sentence in the form of three months so far as provisions of Section 7 of the Act is concerned and one year so far as the provisions of Sections 27(d) of Drugs and Cosmetics Act is concerned. However, it would be clear from the impugned judgement and order passed by the Learned Special Judge that bearing in mind the particular circumstances of the case, Learned Special Judge has also imposed less than minimum prescribed sentence under Section 27(d) of the Drugs and Cosmetics Act. Those circumstances weigh in favour of the accused no.1 for imposing sentence less than the minimum prescribed. There are additional special circumstances which clearly flow from the affidavit filed by accused no.1 as noted herein above. Having regard to such facts and circumstances and having regard to the passage of nearly 16 years since the offence was committed and finally having regard to the aforesaid enumerated circumstances, I am of the opinion that substantive sentence deserves to be reduced to one till the rising of the Court.

In the result, following order is required to be passed:

1) The conviction of appellants (Accused Nos.1 and 3) as recorded by Ld. Special Judge is hereby maintained.

2) Substantive sentence of accused no.1 is reduced to one till the rising of the Court.

3) Sentence of accused no.3 is altered as under:

a) Accused no.3 is directed to pay a fine of Rs.500/- instead of Rs.200/- as directed by the Ld. Special Judge. If Rs.200 has already been paid, the balance sum of Rs.300/- shall be paid. Fine accordingly shall be paid by way of depositing the said amount before the Trial Court.

4) Sentence of accused no.1 is altered as under:

a) Fine imposed on accused no.1, for the offence punishable u/s 7 read with Sec.10 of the Essential Commodities Act, is hereby increased by Rs.300/-, making a total sum of Rs.500.

b) Fine imposed on accused no.1, for the offence punishable u/s 27(d) of the Drugs and Cosmetics Act, is hereby increased by Rs.800/-, making a total sum of Rs.1,000/-.

c) Fine imposed on accused no.1, for the offence punishable u/s 28(a) of the Drugs and Cosmetics Act, is increased by Rs.400/-, making a total sum of Rs.500/-.

If fine imposed by the Trial Court is already paid or deposited by accused no.1, balance shall be paid or deposited by the said accused. Fine accordingly shall be paid or deposited by the accused no.1 before the Trial Court within 4 weeks from today. Substantive sentence as well as sentence of fine shall be implemented before the Trial Court. The accused no.1 shall appear before the Trial Court accordingly on 22-9-2000 before the concerned Judge of the Trial Court (concerned Special Judge). He will ensure that the fine has been deposited by the respective accused. In case any default is committed in depositing the fine, the accused no.1 shall have to undergo S.I. for a period of three months, instead of S.I. for a period of one month as directed by the Ld.

Special Judge.

This appeal is partly allowed in the aforesaid terms. Direct Service is permitted. The bail bond of accused shall stand cancelled/discharged upon undergoing the sentence as above and depositing all the fines as aforesaid.

25-8-2000 (M. S. Parikh, J.)

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